



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/614,340

07/03/2003

Louis Brown Abrams

4811-16

7865

22442

7590

01/25/2007

SHERIDAN ROSS PC  
1560 BROADWAY  
SUITE 1200  
DENVER, CO 80202

EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
--	-----------	---------------

3 MONTHS

01/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/614,340	ABRAMS, LOUIS BROWN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-41 and 45-65 is/are pending in the application.
- 4a) Of the above claim(s) 1-3, 11-26 and 45-65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-10 and 27-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/06</u>   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed November 15, 2006, has been entered. Claims 1-5, 11, 12, 16-19, 24-29, 34, 35, 45, 53, 54, 57, and 58 have been amended as requested. Claims 42-44 are cancelled. Thus, the pending claims are 1-41 and 45-65, with claims 1-3, 11-26, and 45-65 being withdrawn as non-elected.
2. Said amendment is sufficient to withdraw the 112, 2<sup>nd</sup> rejection of claim 4 as set forth in sections 2-4 of the last Office Action.
3. Applicant's arguments regarding the double patenting rejections over copending applications 11/036887, 11/139,439, and 10/613982, as set forth in sections 5-8 of the last Office Action, have been found persuasive. As such, said double patenting rejections are hereby withdrawn.

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 4-10 and 27-41 stand rejected under 35 U.S.C. 103(a) as being obvious over US 6,977,023 issued to Abrams as set forth in section 10 of the last Office Action.

The amendments to claims 4, 5, 27-29, 34, and 35 are made to clarify the claim language and the dependency thereof. As such, said amendments are insufficient to overcome the standing rejection.

***Response to Arguments***

6. Applicant's arguments regarding the prior art rejections have been fully considered but they are not persuasive.

7. Applicant traverses the rejection of the claims over Abrams by asserting the examiner's reliance upon *In re Leshin*, 125 USPQ 416 is misplaced and that the examiner has relied upon improper hindsight (Amendment, paragraph spanning pages 20-21 – page 21, 1<sup>st</sup> paragraph). In response to the former argument, it is asserted *In re Leshin* is appropriately applied. As noted by applicant (Amendment, paragraph spanning pages 20-21), in *Leshin*, the Court stated that “mere selection of a known plastics to make a container dispenser of a type made of plastics prior to the invention, the selection of the plastics being on the basis of suitability for the intended use, would be entirely obvious.” In other words, it would have been obvious to select a known plastic composition for making an article known to be made of plastic, based upon the suitability of said plastic composition for the intended use. Similarly, it would have been readily obvious to select a specific known polyester composition (e.g., PCT) for a generic disclosure of polyester flock fibers in a decorative flock transfer that is dyed with a sublimation process, as is disclosed by the cited Abrams reference. One skilled in the art would understand that flock transfers and sublimation dyeing processes under exposure to heat and that it is desirable for flock pile to be resilient. Thus, PCT is suitable for the intended use of Abrams due to its inherent thermal stability and resilient properties. Therefore, the selection of PCT as a specific polyester is held to be obvious over generic disclosure of polyester in the cited Abrams reference.

8. In response to applicant's assertion of that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on

Art Unit: 1771

obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In particular, applicant asserts the examiner's statement that "PCT is known to have good resiliency and thermal stability" is impermissible hindsight gleaned from applicant's own disclosure. The examiner respectfully disagrees. Specifically, applicant did not invent PCT nor discover its resilient and thermal properties. Rather, PCT fiber is well known in the art as a high performance polyester fiber, which inherently possesses good resiliency and thermal stability. Thus, the examiner's conclusion of obviousness is not based upon applicant's own disclosure, but rather on knowledge that is within the level of ordinary skill in the art at the time the invention was made.

9. Applicant also traverses the prior art rejection by asserting the present invention recognizes many unique advantages in using PCT for flock fiber in sublimation dyeing processes (Amendment, page 21, 2<sup>nd</sup> paragraph). However, applicant's finding that PCT does not flatten as much as PET is not unexpected since PCT's inherently higher melting point and greater loft and resiliency were known in the art prior to applicant's invention. As such, one skilled in the art would expect the PCT flock would flatten less during sublimation dyeing.

10. Applicant again asserts impermissible hindsight with respect to the temperature of drawing and heat setting (Amendment, paragraph spanning pages 21-22). The examiner respectfully disagrees since appropriate temperatures for drawing and heat setting are determined by the *inherent* thermal properties of the PCT fiber, rather than properties invented or discovered

by applicant. Therefore, applicant's arguments are found unpersuasive and the above prior art rejection is maintained.

***Conclusion***

11. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

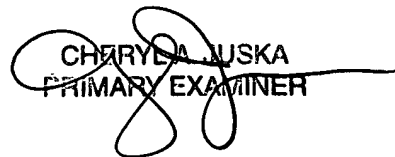
12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1771

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYLA JUSKA  
PRIMARY EXAMINER

cj  
January 20, 2007